

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Simon Wang	Team: Squad #7	CCRB Case #: 201902695	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Wednesday, 03/13/2019 1:15 PM	Location of Incident: § 87(2)(b)	Precinct: 105	18 Mo. SOL 9/13/2020	EO SOL 4/30/2021	
Date/Time CV Reported Mon, 03/18/2019 5:14 PM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Thu, 03/28/2019 11:05 AM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. POM Nicholas Bekas	04530	950063	NARCBQS
2. SGT Thomas Gagliardi	00996	930188	NARCBQS

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. DT3 Shawn Hayes	6093	947770	NARCBQS
2. DT3 Jaipaul Ramdat	5369	953290	NARCBQS
3. DT3 James Sgaglione	5742	952228	NARCBQS
4. DT3 Timothy Terrillion	5858	952286	NARCBQS

Officer(s)	Allegation	Investigator Recommendation
A.SGT Thomas Gagliardi	Abuse: Sergeant Thomas Gagliardi stopped the vehicle in which § 87(2)(b) was an occupant.	§ 87(2)(b)
B.POM Nicholas Bekas	Abuse: Police Officer Nicholas Bekas stopped the vehicle in which § 87(2)(b) was an occupant.	§ 87(2)(b)
C.SGT Thomas Gagliardi	Abuse: Sergeant Thomas Gagliardi searched the vehicle in which § 87(2)(b) was an occupant.	§ 87(2)(b)
D.POM Nicholas Bekas	Abuse: Police Officer Nicholas Bekas searched the vehicle in which § 87(2)(b) was an occupant.	§ 87(2)(b)
E.SGT Thomas Gagliardi	Abuse: Sergeant Thomas Gagliardi entered § 87(2)(b) 1st Floor in Queens.	§ 87(2)(b)
F.POM Nicholas Bekas	Abuse: Police Officer Nicholas Bekas entered § 87(2)(b) 1st Floor in Queens.	§ 87(2)(b)
G.SGT Thomas Gagliardi	Abuse: Sergeant Thomas Gagliardi searched § 87(2)(b) 1st Floor in Queens.	§ 87(2)(b)
H.POM Nicholas Bekas	Abuse: Police Officer Nicholas Bekas searched § 87(2)(b) 1st Floor in Queens.	§ 87(2)(b)

## Case Summary

On March 18, 2019, § 87(2)(b) filed this complaint with IAB. On March 28, 2019, this complaint was received at the CCRB via referral number 19-11673.

On March 13, 2019, at approximately 1:15 p.m., § 87(2)(b) exited his home at § 87(2)(b) in Queens and was stopped in his car by Sgt. Thomas Gagliardi and PO Nicholas Bekas of Narcotics Bureau Queens South in front of the house (**Allegations A and B: Abuse of Authority -** § 87(2)(g) Sgt. Gagliardi and PO Bekas searched the car (**Allegations C and D: Abuse of Authority -** § 87(2)(g) Sgt. Gagliardi went to the front door of his house where § 87(2)(b) — § 87(2)(b)'s mother opened the door. Officers entered the house (**Allegations E and F: Abuse of Authority -** § 87(2)(g) § 87(2)(b) and § 87(2)(b) — § 87(2)(b)'s sister were inside the house. Officers remained on the 1st floor while § 87(2)(b) went into the basement. Officers allegedly searched the 1st floor without a warrant (**Allegations G and H: Abuse of Authority -** § 87(2)(g) At 3:10 p.m. a search warrant was signed authorizing the search of § 87(2)(b). The warrant was brought to the house and the warrant was executed. Officers searched the 1st floor and recovered crack cocaine. § 87(2)(b) was charged with § 87(2)(b).

§ 87(2)(b) provided video footage from his home surveillance system.

## Findings and Recommendations

**Allegation (A) Abuse of Authority: Sergeant Thomas Gagliardi stopped the vehicle in which § 87(2)(b) was an occupant.**

**Allegation (B) Abuse of Authority: Police Officer Nicholas Bekas stopped the vehicle in which § 87(2)(b) was an occupant.**

**Allegation (C) Abuse of Authority: Sergeant Thomas Gagliardi searched the vehicle in which § 87(2)(b) was an occupant.**

**Allegation (D) Abuse of Authority: Police Officer Nicholas Bekas searched the vehicle in which § 87(2)(b) was an occupant.**

§ 87(2)(e), § 87(2)(f)

Computer checks revealed that § 87(2)(b) had an outstanding bench warrant (**BR 1**) for an arrest for

§ 87(2)(b) § 87(2)(g)  
a plan of action was devised to arrest § 87(2)(b) outside of his home, preventing § 87(2)(b) from destroying any evidence, prior to executing a search warrant.

On March 13, 2019, members of Sgt. Gagliardi's field team positioned themselves around § 87(2)(b) § 87(2)(b). Sgt. Gagliardi and PO Bekas were positioned approximately seven or eight houses away in their vehicle with a clear line-of-sight to the front of the house. Sgt. Gagliardi and PO Bekas both stated they recognized § 87(2)(b) from arrest photographs and the photograph in the bench warrant. PO Bekas also stated that he has had prior interactions with § 87(2)(b) § 87(2)(b).

There is no dispute as to the manner in which § 87(2)(b) vehicle was stopped and the manner in which he was placed under arrest. The surveillance video recorded this part of the incident (**BR 2**). Sgt. Gagliardi and PO Bekas saw § 87(2)(b) exit his house and enter a car in the driveway. The officers moved their vehicle to block § 87(2)(b)'s vehicle as it exited the driveway and approached § 87(2)(b) seated in the driver's seat of his car. § 87(2)(b) asked Sgt. Gagliardi what was happening and Sgt. Gagliardi informed him that there was a warrant for his arrest and ordered him out of the vehicle. § 87(2)(b) exited his car and was handcuffed immediately outside of the car. PO Bekas stated that he observed Ziploc bags of crack cocaine on the center console of the vehicle in plain sight. A search of § 87(2)(b)'s body incident to arrest revealed a Ziploc bag with marijuana. § 87(2)(b) denied that any officer found any drugs. Sgt. Gagliardi stated that he did not see where PO Bekas recovered the narcotics. PO Bekas admitted that he conducted a brief inventory search of the vehicles' cabin. The vehicle was later transported to the 105<sup>th</sup> Precinct stationhouse where a thorough search was conducted.

Video footage from the home surveillance cameras at the front of § 87(2)(b)'s home showed when § 87(2)(b) exited the house and the officers stop and arrest of him. The video showed officers entering the car. The video does not show the inside of the car nor whether there were any narcotics visible in plain sight inside the car (**BR 2 and BR 3**).

People v. Johnson, 1 N.Y.3d 252 (2003) held that a car that is lawfully in police custody is subject to routine inventory search to catalogue its contents (**BR 4**).

§ 87(2)(g) § 87(2)(b)  
§ 87(2)(b)  
§ 87(2)(b)  
§ 87(2)(b)  
§ 87(2)(b)

§ 87(2)(g) .

**Allegation (E) Abuse of Authority: Sergeant Thomas Gagliardi entered § 87(2)(b), 1<sup>st</sup> Floor in Queens.**

**Allegation (F) Abuse of Authority: Police Officer Nicholas Bekas entered § 87(2)(b), 1<sup>st</sup> Floor in Queens.**

§ 87(2)(b), which has an independent entrance and stairwell at the front of the house. The 1st-floor apartment is conjoined with the basement, and there is a door to the 1st-floor apartment at the front of the house. § 87(2)(b) resides in the 1st-floor apartment with his girlfriend and their infant daughter. § 87(2)(b) and § 87(2)(b) reside in the basement with § 87(2)(b) s three children (BR 5).

At the time of the incident, § 87(2)(b) and § 87(2)(b) were in the § 87(2)(b) with § 87(2)(b) s infant and § 87(2)(b) s § 87(2)(b)-year-old child. No one else was in the house.

Sgt. Gagliardi stated that § 87(2)(e) he decided to arrest § 87(2)(b) for the open bench warrant before executing a search warrant upon § 87(2)(b) s home. Sgt. Gagliardi decided not to obtain a search warrant prior to arresting § 87(2)(b) because a search warrant would expire in ten days if not executed, and there was no guarantee that § 87(2)(b) could be located and arrested within that ten-day period. § 87(2)(e), § 87(2)(g)

After Sgt. Gagliardi and PO Bekas arrested § 87(2)(b) outside of his house. They decided to secure the house to prevent the destruction of evidence while waiting to obtain the search warrant. When officers attempted to open the front door, § 87(2)(b) s mother – § 87(2)(b) opened the door.

§ 87(2)(b) stated that after § 87(2)(b) left the house, she heard a commotion outside and then heard § 87(2)(b) screaming. She looked out of the windows and saw men walking around the perimeter of the house. § 87(2)(b) opened the front door approximately a foot and a half wide. At that point, she heard § 87(2)(b) scream, “Don’t open the door.” PO Bekas confirmed that § 87(2)(b) was yelling to his mother not to let the officers in. After opening the door, § 87(2)(b) stepped back from the open door to attend to her grandchild. She stated that officers came to the door and walked inside to the living room without speaking. She asked the officers, “What’s going on?” An officer responded by asking her if she knew what her son does for a living. She responded by telling them she does not know. She then asked to see a warrant and was told that they did not have one yet, but were in the process of getting one.

Sgt. Gagliardi and PO Bekas stated that when § 87(2)(b) opened the door, she gave implied consent for them to enter the house by opening the door for them and stepping to the side.

They stated that officers explained the situation to her and that she was allowed to enter the basement while officers remained on the 1st floor.

The surveillance video footage (**BR 3**) showed that someone inside the house opened the door. The video showed that Sgt. Gagliardi and Det. James Scaglione were the first to enter the house. It did not appear that there was any physical resistance to them entering.

§ 87(2)(b) stated she was inside the house but did not see when officers entered the house. § 87(2)(b) spoke to Sgt. Gagliardi on the 1st floor after he had entered the house. Sgt. Gagliardi informed her that they had a search warrant for the house.

In *People v. Arnau*, 58 N.Y.2d 27 (1982), the court held that because officers were confronted with first-hand information that a suspect was selling large quantities of narcotics from his home, they were justified in entering the premises to secure the premises and prevent the destruction of evidence and then wait until a search warrant arrives before conducting a search of the premises (**BR 6**).

§ 87(2)(g) [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED].

**Allegation (G) Abuse of Authority: Sergeant Thomas Gagliardi searched § 87(2)(b) [REDACTED], 1<sup>st</sup> Floor in Queens.**

**Allegation (H) Abuse of Authority: Police Officer Nicholas Bekas searched § 87(2)(b) [REDACTED], 1<sup>st</sup> Floor in Queens.**

§ 87(2)(b) stated that officers told her that she may stay on the 1st floor with them or go to the basement. She stated she decided to go to the basement and brought her grandchildren downstairs. While in the basement, § 87(2)(b) heard sounds she believed were the movement of boxes. She did not go upstairs and did not see what officers were doing upstairs. § 87(2)(b) estimated that approximately an hour and a half later, an officer presented her with a piece of paper that they claimed was a search warrant.

§ 87(2)(b) left the house to pick up § 87(2)(b)'s children from school at a time she estimated was approximately 1:30 p.m. The surveillance camera showed that she left the house at 1:42 p.m. § 87(2)(b) did not return to the house until a time she believed was 3:00 p.m. to 3:15 p.m. The surveillance video indicates she returned home at 3:33 p.m. § 87(2)(b) stated that when she returned home, she saw police officers sitting in the 1st-floor kitchen. One officer was searching inside a kitchen drawer. Other officers were sitting and charging their cell phones. One officer informed her that they were still waiting to execute the search warrant, and that they were only “securing” the house at that time.

PO Bekas stated that he left the house at approximately 1:40 p.m. to obtain the search warrant. He denied that any officer began searching the house before he left. Sgt. Gagliardi stated that he remained at the house after PO Bekas left. Sgt. Gagliardi stated that officers remained in the 1st

floor living room to ensure that no one had access to § 87(2)(b)'s bedroom on the 1st floor. Sgt. Gagliardi denied that any officers began searching before the search warrant was obtained. When asked if officers made any noises while waiting on the 1st floor, Sgt. Gagliardi stated that the only noises that potentially could have been heard in the basement were when any officer walked back-and-forth to the front door.

The search warrant signed by Judge § 87(2)(b) of Queens County Criminal Court, indicated that proof was made by PO Bekas that there was reasonable cause to believe that cocaine and narcotics paraphernalia were located at § 87(2)(b) on the 1<sup>st</sup> floor. The warrant authorized officers to search and seize cocaine and narcotics from the 1<sup>st</sup> floor apartment. The warrant was dated March 13, 2019 and signed at 3:10 p.m. **(BR 7)**

After the search warrant was executed, officers searched in § 87(2)(b)'s bedroom, finding 25 bags of crack cocaine, one plastic twist of cocaine, a scale, \$1597 and 29 cartridges of pistol ammunition. They also searched in the kitchen and recovered utensils believed to be used for preparation of narcotics. **(BR 8)**

The surveillance video only showed the exterior of the house. § 87(2)(g) After PO Bekas left the house, Sgt. Gagliardi could be seen entering and exiting the house. While outside the house, Sgt. Gagliardi was smoking cigarettes, talking on a cell phone and strolling around the front of the house. The video footage shows that additional officers arrived at the house at 3:10 p.m., and that all of the officers left the house with seized evidence in tow at 5:08 p.m. **(BR 13)**.

§ 87(2)(g)  
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### Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which § 87(2)(b) has been a party. **(BR 9)**
- This is the first CCRB complaint to which § 87(2)(b) has been a party. **(BR 10)**
- § 87(2)(b) has been party to one other CCRB complaint as a witness, and not as a victim in any other allegations. **(BR 11)**
- PO Nicholas Bekas has been a member of service for eight years and has been a subject in three CCRB complaints and 12 allegations, none of which were substantiated. § 87(2)(g)
- Sgt. Thomas Gagliardi has been a member-of-service for 17 years and has been a subject in 13 CCRB complaints and 37 allegations, of which five were substantiated:
  - 201410170 involved substantiated allegations of premises entered and property damage against Sgt. Gagliardi. The Board recommended charges and the NYPD imposed a forfeiture of 10 vacation days.

- 201500442 involved substantiated allegations of stop, search of person and threat of summons against Sgt. Gagliardi. The Board recommended Command Discipline B and the NYPD imposed Command Discipline B.

**Mediation, Civil and Criminal Histories**

- This case was not suitable for mediation.
- As of November 8, 2019, the New York City Office of the Comptroller has no record of a Notice of Claim being filed in regards to this complaint.

- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]  
 [REDACTED]  
 [REDACTED]  
 [REDACTED]  
 [REDACTED]  
 [REDACTED]  
 [REDACTED]

Squad No.: \_\_\_\_\_

Investigator:	_____	_____	_____
	Signature	Print Title & Name	Date

Squad Leader:	_____	_____	_____
	Signature	Print Title & Name	Date

Reviewer:	_____	_____	_____
	Signature	Print Title & Name	Date